

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

LYNN ZELVIN,

Plaintiff,

-v.-

AW AUTHENTIC, INC.,

Defendant.

23 Civ. 09241 (JHR)

ORDER OF DISMISSAL

JENNIFER H. REARDEN, District Judge:

On October 20, 2023, Plaintiff filed the Complaint in this case. *See* ECF No. 1. Defendant was served with process on January 9, 2024. *See* ECF No. 7. Its response was therefore due on January 30, 2024. *See* Fed. R. Civ. P. 12(a)(1)(A)(i) (“A defendant must serve an answer . . . within 21 days after being served with the summons and complaint.”). Defendant has not responded to the Complaint or otherwise appeared.

On February 18, 2024, the Court issued an Order to Show Cause directing Plaintiff, “by no later than **February 26, 2024**, [to] move for a default judgment against Defendant or show cause why this action should not be dismissed for failure to prosecute.” ECF No. 8 at 1 (emphasis in original). The Court cautioned Plaintiff that “[f]ailure to submit a timely and proper motion for default judgment may result in dismissal without prejudice of this case.” *Id.* (emphasis in original).

On February 26, 2024, Plaintiff filed a motion for default judgment. The motion, however, did not comply with the Court’s Individual Rules and Practices in Civil Cases in that it failed to proffer “evidence in support of the proposed damages, including contemporaneous records and other such documentation” or “legal authority for why an inquest into damages is or is not necessary,” among other required information. *See* Individ. Rs. & Pracs., Attach. A. In light of these deficiencies, on February 28, 2024, the Court issued an Order informing Plaintiff


that it “w[ould] not consider Plaintiff’s application,” and that “[i]f Plaintiff plan[ned] to proceed with seeking default judgment, then by no later than **March 5, 2024**, Plaintiff shall file a corrected motion for default judgment in accordance with the Court’s Individual Rules.” ECF No. 16 (emphasis in original). The Court again cautioned Plaintiff that “[f]ailure to submit a timely and proper motion for default judgment may result in dismissal without prejudice of this case.” *Id.* (quoting Feb. 18, 2024 Order to Show Cause). Plaintiff failed to file a corrected motion for default judgment pursuant to the Court’s February 28 Order.

Accordingly, under Federal Rule of Civil Procedure 41(b) and the Court’s inherent power, *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-32 (1962), the Court hereby dismisses this case, without prejudice, for failure to prosecute.

The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: March 7, 2024  
New York, New York

  
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JENNIFER H. REARDEN  
United States District Judge